

THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE GWGWALADA JUDICIAL DIVISION
HOLDEN AT COURT NO. 13 GWAGWAGLADA
BEFORE HIS LORDSHIP: HON JUSTICE A. S. ADEPOJU
ON THIS 22ND DAY OF APRIL 2024

FCT/HC/CV/485/2018
MOTION NO: M/6842/2021

BETWEEN

DREAMS CHICKEN AND FRIES LIMITED -----CLAIMANT/RESPONDENT

AND

1. ABUJA ENVIRONMENTAL PROTECTION BOARD
 2. HONNOURABLE MINISTER, FEDERAL CAPITAL TERRITORY
 3. FEDERAL CAPITAL TERRITORY ADMINISTRATION (F. C. T. A)
- } ----DEFENDANTS/APPLICANT

FRANCIS NSIEGBUNAM appears for the Claimant Respondent.

ESTHER I. OKEKE holding the brief of *BETTY UMEGBULEM* for the 1st, 2nd and 3rd Defendants/Applicants.

RULING

By an amended originating summons dated the 3rd of November, 2021, the claimant formulated two issues for determination by the court to wit:

1. Whether by a considered meaning of Section 21 and 38 of the Abuja Environmental Protection Board Act Cap 10 of the Laws of the Federal Capital Territory of Nigeria Volume 1 1997, the defendants can unilaterally find the Claimant guilty and in furtherance thereof, enter upon the premises of the Claimant, seize

the assets of the Claimant and disrupt the business activities of the Claimant without recourse to a Court of law.

2. Whether having regard to the provision of Section 37 of the Abuja Environmental Protection Board Act Cap 10 of the Laws of the Federal Capital Territory of Nigeria Volume 1 1997, the 1st defendant can without prior service of an abatement notice enter upon the premises of the Claimant seize the assets of the Claimant and disrupt the business activities of the Claimant without recourse to a Court of law.

And in the statement in support of the Claim seeks the following reliefs:

1. A Declaration of this Honourable Court that Invasion of the Claimant's business premises at Park No. 792A, Cadastral Zone A07, also known as Plot 1350 Aminu Kano Crescent, Wuse 11, Abuja on the 28th day of November 2018 by the Defendant's staff to disrupt the on-going business of the Claimant without an Order of Court or without the Claimant having been found guilty of any offence relating to noise pollution or sundry nuisance is unconstitutional, unlawful, illegal and wrongful.
2. A Declaration of this Honourable Court that the invasion of the Claimant's Dreams Chicken and Fries Active Park business premises at Park No. 792A, Cadastral Zone A07, also known as Plot 1350 Arminu Kano Crescent, Wuse 2, Abuja on the 28th day of November 2018 by the 1st Defendant's staff to destroy, seize and cart away business properties of the Claimant without an Order of Court or without the Claimant having been found guilty of any offence relating to noise pollution or sundry nuisance is unconstitutional, unlawful illegal and wrongful.
3. A Declaration of this Honourable Court that the invasion of the Claimant's Dreams Chicken and Fries Active Park business premises at Park No. 792A, Cadastral Zone A07, also known as Plot 1350

Aminu Kano Crescent, Wuse 2, Abuja on the 28th day of November 2018 by the 1st Defendant's staff to disrupt the on-going business of the Claimant and to destroy, seize and cart away business properties without prior service of an abatement notice or any warning notice whatsoever is unconstitutional, unlawful Illegal and wrongful.

4. An Order of this Honourable Court restraining the Defendants, by themselves, servants, agents or howsoever from disrupting the on-going business of the Claimant at the Dreams Chicken and Fries Active Park at Park No. 792A, Cadastral Zone A07, also known as Plot 1350 Aminu Kano Crescent, Wuse 2, Abuja on any allegations of noise pollution or sundry nuisance without an Order of Court or without the Claimant having been found guilty of any offence relating to noise pollution or sundry nuisance.
5. The sum of N5, 000, 000. 00 (Five Million Naira) being special and general damages against the Defendants for the unjustified, illegal invasion, interruption/disruption of business activities, destruction of properties, seizure and carting away of the properties/assets of the Claimant from the Dreams Chicken and Fries Active Park at Park No. 792A, Cadastral Zone A07, also known as Plot 1350 Aminu Kano Crescent, Wuse 2, Abuja on the 28th day of November, 2018.

The grounds on which the reliefs are sought are as follows:

1. The Claimant is the lawful allottee in possession of the Dreams Chicken and Fires Active Park at Park No. 792A, Cadastral Zone A07, also known as Plot 1350 Aminu Kano Crescent, Wuse 2, Abuja.
2. The Claimant has not breached any of the terms and conditions of the grant to her of the said Park which is designated to be used as a Recreational Active Park.
3. The Defendants did not serve the Claimant with any abatement notice or any warning notice whatsoever before invading its business premises.
4. The Claimant has not been found guilty of any offence relating to noise pollution or sundry nuisance.
5. The Defendants acted illegally, unlawfully and in self-help.

6. The actions of the Defendants are not justifiable and are condemnable and ought to be condemned.

The 17 paragraph affidavit in support of the originating summons was deposed to by one Peter Aneke, the Manager of the Claimant. And in accordance with the law, the Claimant's counsel filed a written submission.

In opposing the summons, the 1st Defendant urged the court to strike out the suit against the 1st defendant as presently constituted for being incompetent and for lack of jurisdiction by the court on the ground that the Claimant failed to serve the 1st defendant a pre-action notice. The 1st defendant relied on all the processes served on it and a 6 paragraph affidavit in support deposed to by one Innocent Onuoha, an Administrative Clerk attached to the Legal Unit of the 1st defendant. He averred that service of pre-action notice is a precondition to the commencement of this suit, the 1st defendant being a statutory body created vide the Abuja Environmental Protection Board Act, 1997.

In the accompanying written address, Counsel for the 1st defendant relied on the provision of Section 40(3) of the Abuja Environmental Protection Board (AEPB) Act No. 10 Of 1997 which stipulates that;

***“No suit shall be commenced against a member of the Board, the Director, officer or employee of the Board before the expiration of a period of one month after written notice of the intention to commence the suit shall have been served upon the Board by the intending plaintiff or his agent.*”**

4) The notice referred to in subsection (3) of this Section shall clearly and explicitly state, the cause of action, the particulars of the claims, the name and place of abode of the intending plaintiff and the reliefs which he claims.

Section 41 – A notice, summons or other documents required to be served upon the Board under the provision of this Decree or any other enactment of law may be served by delivering it to the Director or to the Secretary or by sending it by registered post and addressed to the Director at the Principal office of the Board.”

The 1st defendant’s counsel stated that there was no pre-action notice pleaded by the claimant in their affidavit in support of summons, that an action commenced without a pre-action notice where one is statutorily required as in this case, has been held by the Supreme Court in the case of **NIGERCARE DEVELOPMWNT CO. LTD V ADAMAWA STATE WATER BOARD (2008) 20 WRN 166 @ 171-175 R. 3, 8 AND 10 – Per OGBUAGU JSC** to be a nullity ab-initio. He also referred to the case of **NIGERIAN RAILWAY COOPERATION V AKINBODE (2008) 52 WRN 176 (LINE 15-45)** where he said the Court of Appeal interprets Section 83(2) of the Nigerian Railway Cooperation Act which is in par-material with Section 40(3) of the Abuja Environmental Protection Board (AEPB) Act No. 10 Of 1997 thus:

“It is well settled that when a defence of non-service of a pre-action notice is raised and it is shown that there has been non-service of preaction notice, the court is bound to hold that the plaintiff has not

fulfilled a pre-condition for instituting his action and that the action is incompetent.” – Per **Augie JCA.**

Counsel submitted that the requirement of pre-action notice in the instant case is not merely ornamental which can be viewed as procedural irregularity, but a mandatory requirement pursuant to Section 40 (3) of the Abuja Environmental Protection Board (AEPB) Act No. 10 Of 1997. Counsel relied on the case of **ODOEMELEM V AMADIUME (2008) 2 NWLR (PT. 1070) 179** where the Court held that:

“Where a pre-action notice is provided for in a statute and it was not given before the commencement of a suit, the suit is incompetent and is liable to be struck out.”

Counsel submitted that the court not only has the authority but also the duty to determine the action in limine where lack of competence is established “because” the competence of an action robs on the jurisdiction of the court to hear it within the classification of the elements that make jurisdiction. The case of **MADUKOLU V NKEMDILI (2001) 46 WRN 1** was relied on by the 1st defendant’s counsel.

The claimant filed a counter-affidavit to the Preliminary Objection of the 1st defendant. The deponent averred in paragraph 4(a)-(d) that the 1st defendant is a juristic person that can sue and be sued, and that the claimant does not have to serve the 1st defendant with a pre-action notice as that is not the intention of the Act. In the written address the counsel argued that the provision of Section 40 (3) relied on by the 1st defendant is specified on the requirement for suing a member of the

Board, the Director, officer or employee of the Board but its manifestly silent on service of pre-action notice on the Board. He submitted that no advocate or judge can expand the provision of the said Section. He relied on the case of **AMADI V NNPC (2000) 10 NWLR (PT. 674) 76 @ 87, SEEFORD COURT ESTATE V ASGER (1949) 2 KB 481**. He submitted that the underlying principle of interpretation is that where the language employed in a statute or instrument is clear and unambiguous, the words must be given their natural and ordinary meaning unless this would lead to manifest absurdity or some repugnancy or inconsistency with the rest of the statute or instrument. He relied on the authority of **PDP V INEC (1999) 11 NWLR (PT. 626) 200 @ PP 276-278 where Ogundare JSC** came to a resolution that a statute or instrument has to be construed according to the literal import, unless there is something else in the context which shows that such a course would tend to derogate from the exact meaning of the words.

He argued that from all literal indication and in the context of Section 40 (3) of the Abuja Environmental Protection Board (AEPB) Act No. 10 Of 1997 , it is plain that a pre-action notice is required to be served where it is intended to sue a member of the Board, the Director or other officers or employee of the Board, that no such condition applies where it is the Board itself that is intended to be sued as there is no ambiguity, absurdity or inconsistency in the words employed in the Section 40 (3), that the lawmaker did not specifically include the Board in the list of persons whom pre-action notice ought to be served as a precondition for

institution of legal action. He urged the court to discountenance the objection as it is not in tandem with the true position of law.

In the reply on points of law, the 1st defendant urged the court to take a community reading of the statute, considering the provision of Section 1, 2 (1), 3, 6, 8, 9, 40 (4) and 41 of the Abuja Environmental Protection Board (AEPB) Act No. 10 Of 1997 and urge the court to decline from applying the literal rule of interpretation to the provision of Section 40 (3) of Abuja Environmental Protection Board (AEPB) Act No. 10 Of 1997. For ease of reference, he reproduced some of the text of the Act thus:

“There is hereby established for the Federal Capital Territory Abuja body to be known as Abuja Environmental Protection Board (in the Decree referred to as “The Board”) which shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

2 (1) The board shall consist of:

(a) A part-time Chairman and the following other members, that is;

(b) The Chairman of the six Area Councils of the Territory.

(c) The Director of Health Services Federal Capital Development Authority (In this Decree referred to as “The authority”)

(d) Director Planning, Survey and Land, Ministry for the Territory.

(e) Two persons to represent the public sector and

(f) The Director of the Board.

Section 41 – A notice, summons or other documents required or authorized to be served upon the Board under the provision of this

Decree or any other enactment of law may be served by delivering it to the Director or to the Secretary or by sending it by a registered post and addressed to the Director or at the Principal office of the Board.”

Counsel argued that taking a global view of the AEPB Act 1997, and in the light of the provision above, the Board was established by virtue of the provision of Section 1 of the Act and state in part that it shall be a body corporate with perpetual succession and a continuum seal and may sue and be sued in its corporate name. That it implies that the Board is a juristic person. That Sections 2 and 3 of the Act provides for the members of the Board and their tenure of office, while no provision of the Act confers juristic personality on any member of the Board, that except for the Director, the Board members are non-juristic persons. The members he argues constitutes the Board and perform the functions and responsibility of the Board as a collective entity. That they perform the tenets of the Board as provided for in Section 6, 7 and 8 of the Act collectively. That none of the members can be singled out and sued as no member solely takes any decision or perform any function independent of the Board.

Counsel also posited that members of the Board, the Director, officers or employee of the Board are agents of the department, and it is trite that a disclosed principal is liable for the acts of his agent carried out in the course of the exercise of his authorized functions i.e. within the scope of his authority. He relied on the authorities of **VINZ INTERNATIONAL NIGERIA LTD V OLAKULE MOROHUNDIYA (2009) 11 NWLR (PT. 1153)**

562, SAMUEL OSIGWE V PSPLS MANAGEMENT CONSORTIUM LTD & 13 ORS (2009) 3 NWLR (PT. 1128) 378.

Counsel further submitted that members of the Board, Director, officers or employees of the Board as agents of the defendants are not personally liable for things done in the course of the performance of their authorized functions, as they perform the functions of the defendant on behalf of the defendant. That the board is the proper person to sue and be sued upon the exercise of such functions, as it would be inconsistent with the law to sue the agents for the act of the principal.

He further contended that members of the Board on the exercise of the functions of the Board did not interface with the public, but interface left for the Director, officers or employees of the Board. Learned counsel also commended to the court the Supreme Court decision in the case of **AG RIVERS STATE V AG BAYELSA STATE (2012) LPELR 3.336 SC, OFOBOCHE V OGOJA LOCAL GOVERNMENT (2001) 16 NWLR (PT. 739) @ 45**, and the Court of Appeal decision in the case of **BANNURAM V HILLARY (2023) LPELR 2085 CA**. That the provision of Section 40 (2) of AEPB Act does not apply to the officers listed in the provision but also to the institute. The Counsel also examined the provisions of Section 41 and 42 (1) of the Act, which bothers on service of summons and notices on the Board, and Section 42 (1) on an action or suit against the Board.

Section 42 (1): "In any action or suit against the Board, no execution or attachment of processes in the nature thereof shall be issued against the Board."

And the decision of my learned brother in the case of **ARCHITECT CHURCHILL V AEPB SUIT NO. CV/2999/2015 (UNREPORTED)**, **ANDREW ADUA V KABIRU RABIU & ANOR SUIT NO. FCT/HC/CV/1591/10 (UNREPORTED)** AND **GUARANTY TRUST BANK V AEPB SUIT NO. CV/383/2018 (UNREPORTED)**, that provision of Section 40 (3) of the Act should be read to include the Board, as exclusion of the Board will lead to manifest absurdity. He urged the court to decline from applying the literal rule of interpretation in construction of Section 40 (3) as it will not elicit the intendment of the lawmaker.

The posed question from the argument of both the claimant and the 1st defendant is whether a pre-action notice is to be served on only the members of the Board and not the Board as contended by the claimant's counsel. Counsel to the parties have interpreted the provision of Section 40 (3) of the AEPB to the best of their abilities. It is a general rule of the truism in the interpretation of statute that when the language, terms, content or words used in any enactment are clear and unambiguous. They must be given their ordinary meaning unless this would lead to absurdity or be in conflict with some other provisions thereof. The court will not lend its weight to such interpretation. The language of the statute must not be structured to defeat the aim of the statute. See **OMATSEYE V FRN (2017) LPELR 42719 CA.**

Where the words, terms used in an enactment is capable of different meanings, or the meanings are not apt, such words are not to be interpreted in isolation, but within the central context of the entire statute as a whole, by examining other provisions in order to elicit the

meaning or the intendment of the framers. **EMENIKE V ORJI (2008) LPELR 4103 CA, KATAH PROPERTY INVESTMENT LTD V CHAIRMAN EFCC (2003) LPELR 59736 CA, BAUCHI V ABDULLAHI & ORS (2021) LPELR 55150 CA, SDV (NIG) LTD V OJO & ANOR (2016) LPELR 40323 CA.** The Court of Appeal in **SDV (NIG) LTD Supra** relied in the case of **KRAUS V THOMPON ORGANISATION V NIPSS (2004) 17 NWLR (PT. 901) 44** where Onoghen JSC stated thus:

“Where the language used in the legislative or statute or constitution is clear, explicit and unambiguous as found in the instant case, the judge must give effect to it as words used to speak the intention of the legislature.” The Court of Appeal went further *“The first choice on the interpretation of statute is the literal rule. It is established now that there are 3 rules of statutory interpretation which dominates our historical development those are; (1) mischief Rule, (2) Literal Rule and (3) Golden Rule. Mischief Rule is used to explain what was said by parliament, not to change it. The object of the statute is relevant at all times. Golden Rule can be invoked when there is material disharmony in the statute, not in cases in which a literal interpretation would result, when are absurd or inconvenient for either reason. The golden rule is employed when a literal interpretation will lead to absurdity.”* – Per **Nimper JCA.**

To elicit the intention of the framer of Section 40 (3) of the AEPB Act, the provision of Section 2 (1) of the Act which defines the composition of the word ‘Board’ must be read along with the Section 40 (3) of the Act. The Board is a juristic person made up of the members consist in Section 5 (1)

of the Act. These members are agents of the Board, a disclosed principal who is liable for the acts carried out by its agents in the course of the exercise of its authorized functions or within the scope of its authority. I agree with the submission of the learned counsel for the 1st defendant that the members of the Board, the Director, officers or employees of the Board as agents are not precariously liable for things done in the cause the performance of their authorized function. The Board is to be sued through its members. It is also important to state that the provision of Section 41 of the Act which required service of summons on the Board is to be served by delivering it to the Director or the Secretary or by sending it by registered post and addressed to the Director at the principal officer of the Board. This presumes that the Board is to be served a notice or summons through its Director who is a member of the Board. The Board is therefore not exonerated from service of notice or summons or pre-action notice. Service on the Director is service on the Board. "A member of the Board" perform the functions and responsibility of the Board as a collective body or entity as rightly opined by the 1st defendant's counsel. Unless it is an action in personam any action directed against any member of the Board as constituted in Section 2 of the Act in the course of their function and responsibility authorized or assigned by the Board is an action against the Board. The interpretation that from all literal indication in the context of Section 40 (3) of the AEPB Act, a pre-action notice is required to be secured where it is intended to sue a member of the Board, the Director or other officers or employee of the Board, and that no condition applies where it is the Board itself that is intended to be

sued, is very absurd and inconsistent with the provision of Section 2 (1), 40 (3) and 41 of the AEPB Act.

From the interpretation of Section 40 (3) of the AEPB, the Board cannot be isolated from its members and vice-versa in the prosecution of any action against it. The service of the pre-action notice is therefore a precondition to the institution of an action against the Board. The non-service as prescribed in the statute renders the entire action incompetent. I hold that the instant action is incompetent and it is hereby struck out.

SIGN

**HON. JUDGE
22/4/2024**